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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,658	02/05/2004	Robert G. Cole	2003-0225	8814

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EXAMINER
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POLLACK, MELVIN H

ART UNIT	PAPER NUMBER
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2469

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12/17/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/774,658	<b>Applicant(s)</b> COLE ET AL.	
	<b>Examiner</b> MELVIN H. POLLACK	<b>Art Unit</b> 2469	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### **Continued Examination Under 37 CFR 1.114**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 30 June 2010 has been entered.

### **Response to Arguments**

2. Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.

3. Examiner maintains his original stance in regards to the interpretations of path measurements and charging degradations against a particular router. However, in the interest of advancing prosecution and in simplifying the rejection, the examiner has withdrawn the previous art rejection in favor of new art. The examiner retains the right to reintroduce the prior art rejection in a later action as needed.

### **Claim Rejections - 35 USC § 112**

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-7 and 12-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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6. Claim elements such as "means for taking measurements" and "means for charging degradations" are means plus function limitations that invoke 35 U.S.C. 112, sixth paragraph. However, the written description fails to disclose the corresponding structure, material, or acts for the claimed function. No portion of the specification or drawings discloses, let alone sufficiently discloses, the corresponding structure, material, or acts for the claimed function. For computer-implemented means, a bare statement of known techniques or methods is not a sufficient disclosure, nor is a structure of a general purpose computer or microprocessor without at least a disclosure of an algorithm a sufficient disclosure.

7. Applicant is required to:

- a. Amend the claim so that the claim limitation will no longer be a means plus function limitation under 35 USC 112, sixth paragraph; or
- b. Amend the written description of the specification such that it expressly recites what structure, material, or acts perform the claimed function without introducing any new matter (35 U.S.C. 132(a)).

8. If applicant is of the opinion that the written description of the specification already implicitly or inherently discloses the corresponding structure, material or acts so that one of ordinary skill in the art would recognize what structure, material or acts perform the claimed function, applicant is required to clarify the record by either:

- a. Amending the written description of the specification such that it expressly recites the corresponding structure, material or acts for performing the claimed function and clearly links or associates the structure, material or acts to the claimed function, without introducing any new matter (35 U.S.C. 132(a)); or

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b. Stating on the record what the corresponding structure, material, or acts, which are implicitly or inherently set forth in the written description of the specification, perform the claimed function. For more information, see 37 CFR 1.75(d) and MPEP 2181 and 608.01(o).

### **Claim Rejections - 35 USC § 102**

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 1, 2, 4-7, 12-13, 15-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Hardy (7,099,282).

11. For claims 1, 12, Hardy teaches a system and server (abstract) for making quality measurements in a network having a plurality of routers for routing traffic through the network (col. 1, line 1 - col. 7, line 35; col. 23, line 1 - 15), the system comprising:

- a. means for taking measurements on each path of all paths within the network (col. 8, line 50 – col. 10, line 35; taking measurements on paths that will be used in calculations to discover problems), wherein the each path is between a pair of routers from the plurality of routers (col. 15, line 65 – col. 16, line 55; receivers coupled to each router); and
- b. means for charging a single degradation against a particular router of the plurality of routers within a path (col. 17, lines 5 – 40; charging routers, i.e. per packet lost) when

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data related to the measurements falls below a target value even though the particular router is responsible for multiple path failures (col. 8, line 50 – col. 10, line 35; measurements used in calculations to discover problems) and tracking a number of degradations for each one of the plurality of routers in the network over a period of time (col. 14, lines 10 – 30; sufficient observation time).

12. For claims 2, 13, Hardy teaches that the network is a voice over internet protocol network (col. 3, lines 40 – 50; col. 7, line 35 – col. 8, line 50; VoIP network).

13. For claims 4, 15, Hardy teaches a manual mechanism for entering information into a matrix (col. 9, lines 25 – 60; effects matrix).

14. For claims 5, 16, 17, Hardy teaches that the information comprises at least one of: an indication of a site where a problem occurs (col. 17, lines 5 – 40; charging routers, i.e. per packet lost), an indication of a nature of the problem (col. 11, line 30 – 50; mapping combined effects), and an identifier of an individual that reports the problem (col. 16, lines 25 – 55; identify service engine recipient).

15. For claims 6, 18, Hardy teaches that the matrix includes a matrix of source routers and destination routers (col. 17, lines 5 – 40; charging routers, i.e. per packet lost).

16. For claims 7, 19, Hardy teaches that the matrix includes set events and clear events for one of the source routers and one of the destination routers (col. 6, line 50 – col. 20, line 25; replace first set with second set).

### **Claim Rejections - 35 USC § 103**

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17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. Claim 3 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hardy as applied to claims 1, 12 above, and further in view of Dent (5,631,898).

19. For claims 3, 14, Hardy teaches the use of many R-Factor-like data measurements (col. 8, line 50 – col. 10, line 35; taking measurements on paths), but does not expressly disclose that the data related to the measurements is an R-Factor. Dent teaches a method and system (abstract) of making quality measurements in wireless networks (col. 1, line 1 – col. 4, line 60 and col. 54, lines 25 – 40) that includes this limitation (col. 34, line 40 – col. 35, line 45; tying R-Factor to C matrices). At the time the invention was made, one of ordinary skill in the art would have added Dent R-Factors to the Hardy system in order to provide improvements to capacity (col. 3, lines 40 – 55).

20. Claims 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hardy in view of Dent as applied to claim 3 above, and further in view of Vogel (6,785,292).

21. For claim 8, Hardy teaches a method (abstract) of making quality measurements in a network (col. 1, line 1 – col. 7, line 35; col. 23, lines 1-15), the method comprising:

- a. monitoring an measurement for each path of all paths within the network (col. 8, line 50 – col. 10, line 35; path measurement), wherein the each path is between a pair of routers (col. 15, line 65 – col. 16, line 55; receivers coupled to each router);

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- b. tracking a path that exhibits the measurement below a target value (col. 8, line 50 – col. 10, line 35; path measurement);
  - c. determining if an overlap exists over time for multiple paths connecting to a particular router (col. 11, lines 30 – 50; mapping combined effects);
  - d. charging the particular router connected to the multiple paths with one degradation (col. 17, lines 5 – 40; charging routers) if the overlap exists (col. 8, line 50 – col. 10, line 35; measurements used in calculations to discover problems);
  - e. charging the particular router with each degradation connected to the multiple paths (col. 17, lines 5 – 40; charging routers) if the overlap does not exist (col. 8, line 50 – col. 10, line 35; measurements used in calculations to discover problems); and
  - f. tracking a number of degradations for each router of all routers in the network over a period of time (col. 14, lines 10 – 30; sufficient observation time).
22. Hardy teaches the use of many R-Factor-like data measurements (col. 8, line 50 – col. 10, line 35; taking measurements on paths), but does not expressly disclose that the data related to the measurements is an R-Factor. Dent teaches a method and system (abstract) of making quality measurements in wireless networks (col. 1, line 1 – col. 4, line 60 and col. 54, lines 25 – 40) that includes this limitation (col. 34, line 40 – col. 35, line 45; tying R-Factor to C matrices). At the time the invention was made, one of ordinary skill in the art would have added Dent R-Factors to the Hardy system in order to provide improvements to capacity (col. 3, lines 40 – 55).
23. Harvey does not expressly disclose tracking a start time and end time indicating when the R-Factor of the path falls below the target value. Vogel teaches a method and system (abstract) of measuring paths (col. 1, line 1 – col. 5, line 15 and col. 24, line 50 – col. 25, line 5) that



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includes this limitation (col. 7, line 60 – col. 8, line 55; backoff start and end). At the time the invention was made, one of ordinary skill would have added Vogel start and end times to the Harvey system in order to provide improvements to transmission monitoring (col. 3, lines 45 – 55).

24. For claim 9, Examiner takes official notice to the limitation that the target value is 70. The specific value of the target does not patentably distinguish the claimed system. Further, the recited statement of intended use does not patentably distinguish the claimed system. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide any target value in the system taught by Harvey because the subjective interpretation of the value does not patentably distinguish the claimed invention; a network system.

25. For claim 10, Harvey does not expressly disclose entering the start time as a set event in a matrix. Vogel teaches this limitation (col. 14, line 40 – col. 19, line 65; length of transmission interval).

26. For claim 11, Harvey does not expressly disclose entering the end time as a clear event in a matrix. Vogel teaches this limitation (col. 14, line 40 – col. 19, line 65; length of transmission interval).

### **Conclusion**

27. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELVIN H. POLLACK whose telephone number is (571)272-3887. The examiner can normally be reached on 8:00-4:30 M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ian Moore can be reached on (571) 272-3085. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melvin H Pollack/  
Examiner, Art Unit 2469  
15 December 2010